

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BIG LOTS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11967 (JKS)

(Jointly Administered)

Hearing Date: TBD

Objection Deadline: October 31, 2024 at 4 p.m. (ET)

**THE NORMANDY DAYTON LANDLORD’S
MOTION TO COMPEL PAYMENT OF POST-PETITION RENT**

Normandy Square East, LLC (the “Normandy Dayton Landlord”) moves the Court to compel payment of Post-Petition Rent for the Normandy Dayton Store (as those terms are defined below), and in support thereof respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion in accordance with 28 U.S.C. §§ 157 and 1334. This Motion is a core proceeding in accordance with 28 U.S.C. § 157(b)(2)(A), (B), (M) and (O). Venue is proper in accordance with 28 U.S.C. §§ 1408 and 1409.

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers, are as follows: Great Basin, LLC (6158); Big Lots, Inc. (9097); Big Lots Management, LLC (7948); Consolidated Property Holdings, LLC (0984); Broyhill LLC (7868); Big Lots Stores – PNS, LLC (5262); Big Lots Stores, LLC (6811); BLBO Tenant, LLC (0552); Big Lots Stores – CSR, LLC (6182); CSC Distribution LLC (8785); Closeout Distribution, LLC (0309); Durant DC, LLC (2033); AVDC, LLC (3400); GAFDC LLC (8673); PAFDC LLC (2377); WAFDC, LLC (6163); INFDC, LLC (2820); Big Lots eCommerce LLC (9612); and Big Lots F&S, LLC (3277). The address of the debtors’ corporate headquarters is 4900 E. Dublin-Granville Road, Columbus, OH 43081

2. The statutory bases for the relief requested in this Motion are Bankruptcy Code (11 U.S.C. §§ 101 et seq.) §§ 105, 503 and 365.

RELEVANT FACTS

3. The Normandy Dayton Landlord is the lessor of Big Lots Store # 1671, located at 359 Miamisburg-Centerville Road, Dayton, Ohio (the “Normandy Dayton Store”) pursuant to an unexpired written non-residential real property lease agreement dated November 1, 2001 between the Normandy Dayton Landlord and Big Lot Stores, Inc. (the “Tenant”) (as amended from time to time, the “Lease”).² The Lease is voluminous and, therefore, is not attached to this Motion; however, a copy of the Lease is available upon request.

4. In September, 2024, the monthly base rent for the Normandy Dayton Store was \$10,816.67 plus additional amounts due under the Lease, including insurance, taxes, and CAM charges.

5. Big Lots, Inc. and its affiliated Debtors (including the Tenant) filed for Chapter 11 relief on September 9, 2024 (the “Petition Date”).

6. Prior to the Petition Date, the Debtors commenced a going out of business sale at the Normandy Dayton Store.

7. Since the Petition Date, the Tenant has continued to occupy, and the Debtors have received the benefits from the use of the Normandy Dayton Store.

8. On October 9, 2024, the Normandy Dayton Store appeared on (a) the *Second Notice of (A) Bid Deadline, (B) Sale Hearing, and (C) Potential Assumption and Assignment of Certain*

² The Debtors’ filings referenced in paragraph 8 below identified the Debtor entity as Big Lots Stores, LLC.

Leases (D.I. 466) and (b) the *Second Notice of Rejection of Certain Executory Contracts and/or Unexpired Leases (and the Abandonment of Property)* (D.I. 478).

9. The Debtors have not paid base rent or other amounts due under the Lease for the period from the Petition Date through September 30, 2024, or the month of October, 2024 (collectively, “Post-Petition Rent”).³

10. The total Post-Petition Rent due is \$31,727.57, which comprised of:

September base rent	\$7,571.67
September CAM charges	\$1,811.92
September insurance	\$292.38
September real estate taxes	\$3,388.32
October base rent	\$10,816.67
October CAM charges	\$2,588.46
October insurance	\$417.69
October real estate taxes	\$4,840.46

RELIEF REQUESTED

11. Bankruptcy Code § 365(d)(3) requires a debtor-lessee of an unexpired lease of non-residential real property to “...timely perform all of the obligations of the debtor ...arising from and after the order for relief...” Bankruptcy Code § 365(d)(3) protects landlords by requiring debtor-tenants to timely perform their lease obligations. In re Montgomery Ward Holding Corp., 268 F.3d 205, 209 (3rd Cir. 2001).

³ The aforementioned amounts represent 70% (i.e., 21 days) of the September amounts due under the Lease

12. Furthermore, Bankruptcy Code §§ 503 (a) and (b) allow a party to request payment of an administrative expense for the “... actual, necessary costs and expenses of preserving the estate...” Accordingly, a landlord is entitled to payment of an administrative expense for a debtor/tenant’s post-petition use and occupancy of a leased property. In re Goody’s Family Clothing Inc., 392 B.R. 604 (Bankr. D. Del. 2008), aff’d, 610 F.3d 812 (3rd Cir. 2010).

13. From the Petition Date through September 30, 2024, the Debtors had the use and benefit of the Normandy Dayton Store. Further, the Debtors have not paid rent for October, 2024. The Debtors had (and will continue to have the use and benefit of the store through at least the conclusion of the going out of business sale). Therefore, the Normandy Dayton Landlord is entitled to immediate payment of the Post-Petition Rent and such other relief to which the Landlord is entitled at law or in equity.

RESERVATION OF RIGHTS

The Normandy Dayton Landlord reserves all other rights, claims, and interests with respect to Lease, the Normandy Dayton Store, and any related matters (including, without limitation, all rights under 11 U.S.C. 365(d)(3)).

WHEREFORE, the Normandy Dayton Landlord respectfully requests that this Court enter an order (i) compelling the Tenant to immediately pay the Post-Petition Rent; and (ii) for such other and further relief as is just and proper.

Dated: October 17, 2024
Wilmington, DE 19801

ESBROOK P.C.

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